

ORIGINAL

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

In the Matter of:

Amendment of Part 90 of the  
Commission's Rules to Permit  
Secondary Fixed Tone Signaling  
and Alarm Operations by Part 90  
Private Land Mobile Radio  
Services Licensees of Trunked  
800/900 MHz Systems

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To: The Commission

PETITION FOR RULE MAKING

The American Petroleum Institute, sometimes hereinafter referred to as "API," pursuant to the provisions of Section 1.401 of the Rules and Regulations of the Federal Communications Commission, by its attorneys, hereby respectfully submits this Petition for Rule Making ("Petition") to amend Part 90 of the Rules to relax existing restrictions so as to enable Part 90 Private Land Mobile Radio Service ("PLMRS") licensees of 800 MHz trunked systems to make more efficient and enhanced use of their secondary fixed tone signaling and alarm capabilities.

## **I. PRELIMINARY STATEMENT**

1. API is a national trade association representing over 200 companies involved in all aspects of the oil and gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as a spokesman before federal and state regulatory agencies and legislative bodies. The API Telecommunications Committee is one of the standing committees of the organization's General Committee on Transportation. The committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities in the oil and gas industries. The Telecommunications Committee is the API's primary committee concerned with telecommunications regulatory matters and is supported and sustained by licensees that are authorized by the Commission to operate two-way land mobile radio telecommunications facilities in the Petroleum Radio Service and other categories of the Private Land Mobile Radio Services.

2. These telecommunications facilities are employed to support the search for and production of oil and

natural gas. Mobile radio systems are also used to ensure the safe pipeline transmission of natural gas, crude oil and petroleum products, and for the processing and refining of these energy sources, as well as for their ultimate delivery to industrial and residential consumers. The facilities licensed to API's members are thus essential to the provision of our nation's energy sources.

3. API has been an active participant for more than 40 years in virtually every Commission proceeding that concerned either directly or indirectly the allocation and use of spectrum for the PLMRS. The proposals advanced in this Petition, if adopted, will have a significant beneficial impact on members of API and other Part 90 licensees of 800 MHz trunked systems. Accordingly, API respectfully submits this Petition for Rule Making.

## **II. PETITION FOR RULE MAKING**

4. In this Petition for Rule Making, the American Petroleum Institute urges the Commission to amend Part 90 of the rules so as to provide uniformity in those rule provisions that govern secondary fixed tone signaling operations in the bands above 806 MHz. Adoption of the

proposed change will permit licensees of 800 MHz trunked systems to make more efficient and enhanced use of their fixed tone signaling and alarm capabilities. To do so, API proposes the amendment of Part 90 of the Commission's rules as set forth in the Appendix A associated herewith. This change, if implemented by the Commission, will provide consistency between the present regulatory treatment of fixed tone signaling transmissions conducted on trunked Specialized Mobile Radio (SMR) systems and fixed tone signaling operations on other trunked systems in the frequency bands at 800/900 MHz.

5. In general, the Commission has maintained a policy of licensing private fixed, point-to-point and point-to-multipoint operations in spectrum governed by Part 94 of the rules, while reserving spectrum allocated under Part 90 to satisfy private mobile communication requirements. One exception to this policy has been for fixed tone signaling operations permitted on a secondary basis. For example, the Commission has permitted secondary fixed tone signaling on frequencies allocated to the Power and Petroleum Radio Services since the 1950s. The Commission extended this capability to the Local Government, Police, and Fire Radio Services in 1963, and later to the

Highway Maintenance and Forestry Conservation Radio Services in 1975. In each instance, the Commission made the determination that such fixed use would not disrupt the primary function of these frequencies, i.e., base/mobile dispatch communications.

6. In its Report and Order in PR Docket No. 86-78 released in 1986, the Commission extended the scope of this exception to allow trunked SMR system end-users to conduct fixed signaling operations on a secondary basis within the area normally covered by the licensee's mobile service operation.<sup>1/</sup> In implementing this change, the Commission determined that it was not necessary to apply the operational restrictions contained in Section 90.235 of the rules<sup>2/</sup> to SMR tone signaling transmissions because of the exclusive nature of the frequency assignments. In its discussion, the Commission stated that "the decision whether to permit fixed operations on mobile service frequencies has

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<sup>1/</sup> In the Matter of Amendment of Part 90 of the Commission's Rules to Permit Secondary Fixed Tone Signaling and Alarm Operations by End-Users of Trunked SMRS Systems, PR Docket No. 86-78, Report and Order, (adopted November 10, 1986), 1 FCC Rcd 926 (1986).

<sup>2/</sup> Section 90.235 imposes limits on the duration of signaling transmissions, the number of permissible repetitions of the signal, and the proportionate share of air time that may be used for such transmissions.

been based in the past on the potential for interference to base/mobile dispatch operations."<sup>3/</sup> With regard to the SMR service, the Commission found that since the frequencies that are available for trunked SMR operations are assigned on an exclusive basis, interference to other co-channel SMR systems would not present any problem.<sup>4/</sup>

7. The parallels between SMR systems and the trunked systems operated by other Part 90 eligibles at 800/900 MHz are readily apparent. In both cases, the systems are licensed on an exclusive basis. Regardless of service category, the frequencies licensed for trunked systems at 800/900 MHz are not ordinarily shared on a co-channel basis within interference range. Nonetheless, under current rules, all non-SMR fixed tone signalling transmissions at 800/900 MHz remain subject to the Section 90.235 restrictions, whereas SMR systems are exempt from these limitations.

8. As in the case of SMR systems, there is no public interest benefit to be gained by continuing to subject non-SMR fixed tone signaling operations conducted on

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<sup>3/</sup> Id., ¶ 8.

<sup>4/</sup> Id.

trunked systems to Section 90.235. Accordingly, in the interests of regulatory consistency and to promote enhanced efficiency in the use of the radio spectrum, API requests that the Commission eliminate the requirements of Section 90.235 insofar as they apply to Part 90 PLMRS licensees of 800 MHz trunked systems. API requests that, in lieu of Section 90.235, the Commission substitute provisions comparable to the existing Section 90.637 trunked SMR systems regulations. Proposed language to implement this change is set forth in Appendix A.

9. By this petition, API simply asks the Commission to conform its regulatory treatment of Part 90 PLMRS licensees of 800 MHz trunked systems with the secondary fixed tone signaling flexibility already extended to licensees of trunked SMR systems. As discussed previously, if the Commission's criterion for taking such action regarding trunked SMR systems was the fact that the exclusive use nature of the assignments diminished the potential for interference to other end-users, the same rationale is equally applicable to all 800 MHz trunked systems in the PLMRS. Thus, there are no logistical reasons why the Commission cannot extend the same liberalization of

frequency use that it has already done for trunked SMR systems.

10. While no PLMRS entity would be harmed by these changes, the existing restrictions do represent an impediment to the most efficient use that could be made of the assigned spectrum. The existing regulations are inherently restrictive in nature and prevent 800 MHz licensees of trunked systems from making full and complete utilization of their systems. Given the minor nature of the changes that would have to be made to the Part 90 rules to effectuate this proposal, the Commission can readily take the necessary action to rectify the disparity in treatment.

11. API also believes that there is good cause for the Commission to issue an Order adopting these rule amendments without prior notice and public comment. The rule amendments in the attached Appendix are essentially procedural in nature and thus may be considered exempt from the prior notice and comment provisions set forth in the Administrative Procedure Act. See 5 U.S.C. § 553(b)(3)(A). Prior notice and comment procedures may also be reasonably determined as unnecessary under 5 U.S.C. § 553(b)(3)(B). The specific rule amendments proposed in this Petition are



identical to those adopted by the Commission in PR Docket No. 86-78. This action is not controversial in nature and receipt of additional comments would not significantly add to the public record on these rule changes. In this regard, it is significant that in the Docket No. 86-78 proceeding, none of the commenting parties opposed the Commission's proposal. There is ample precedent in prior Commission decisions for the agency to implement the amendment requested in this Petition without notice and public comment.<sup>5/</sup>

### III. CONCLUSION

12. API submits that the Commission should strive for consistency throughout its treatment of all trunked system users. With respect to fixed tone signaling operations, such consistency can be achieved by removing the existing restrictions on Part 90 Private Land Mobile Radio

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<sup>5/</sup> See, In the Matter of Amendment of the Commission's Rules to Implement a System of Temporary Licensing for Add-On Users of Multiple Licensed Radio Facilities Authorized in the Private Land Mobile Radio Services and Operating Below 800 MHz, RM-4039, Final Rule, adopted March 31, 1983, 48 Fed. Reg. 17588 (April 25, 1983). The Commission determined that public comment on the requested rule change would not serve any useful purpose because the change being implemented was similar in nature to an earlier decision that was the subject of formal notice and comment.

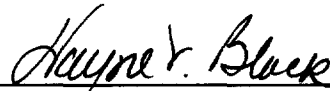
Service licensees of 800/900 MHz trunked systems. Such action would also promote the more efficient use of the radio spectrum.

**WHEREFORE, THE PREMISES CONSIDERED,** the American Petroleum Institute hereby respectfully requests that the Federal Communications Commission amend Part 90 of its Rules and Regulations to eliminate unnecessary restrictions on Private Land Mobile Radio Service licensees of 800/900 MHz trunked systems in the manner described in this Petition for Rule Making.

Respectfully submitted,

**THE AMERICAN PETROLEUM INSTITUTE**

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## APPENDIX A

Part 90 of the Commission's Rules is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

2. Section 90.235 is amended by adding a new paragraph (1) to read as follows:

"(1) Secondary fixed-tone signaling operations conducted in accordance with the provisions of § 90.637 are exempt from the foregoing provisions."

3. Section 90.637 is amended by revising paragraph (c) to read as follows:

"(c) All trunked licensees and licensed end users may use the system for fixed ancillary signaling and data transmissions. All such fixed use is subject to the following requirements:

"(1) All operations shall be on a secondary, non-interference basis to the primary mobile operation of any other licensee.

"(2) The output power shall not exceed 30 watts (at the remote site).

"(3) Any fixed transmitters will not count toward meeting the mobile loading requirements nor be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile systems.

"(4) Automatic means shall be provided to deactivate the remote transmitter in the event that the carrier remains on for a period in excess of three minutes.

"(5) Operational-fixed stations authorized pursuant to the provisions of this paragraph are exempt from the requirements of § 90.425 and § 90.429."